IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 4406 of 2000()

CRRP.47/2000 of SESSIONS COURT, THRISSUR DT. 12.7.2000.
MC.163/1999 of SUB DIVISIONAL MAGISTRATE'S COURT, THRISSUR, DT.25.10.99
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PETITIONER: REVISION PETITIONER – COUNTER PETITIONER

MUHAMMEDKUTTY @ THOMAS, S/O.MOIDEEN,
KUMBINIVALAPPIL HOUSE,
P.O. THALASSERY, THRISSUR DISTRICT.

BY ADV. SRI.K.GEORGE VARGHESE KANNANTHANAM

RESPONDENT: RESPONDENT- PETITIONER

STATE OF KERALA, REP.BY THE
SUB INSPECTOR OF POLICE,
CHERUTHURUTHY POLICE STATION,
P.O. CHERUTHURUTHY, THROUGH THE
DIRECTOR OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON 12.03.2007 PASSED THE FOLLOWING:

ORDER ON CRL.MP. NO.4065/2000 IN CRL.MC.4406/2000

DISMISSED

12.03.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- T.R.RAMACHANDRAN NAIR, JUDGE

/TRUE COPY/

tss

K.R. UDAYABHANU, J

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CRL. M.C. NO. 4406 OF 2000

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Dated this the 24th day of January 2007

O R D E R

The petitioner, against whom the proceedings under section 110 Cr.P.C has been initiated by the Sub Divisional Magistrate, has sought for getting the same quashed as the enquiry was not completed within a period of 6 months from the date of its commencement vide Section 116(6) Cr.P.C. He had raised the above contention before the Sessions Judge vide Revision filed as C.R.P. No. 47/2000. The Sessions Judge rejected the same on the ground that the period has to be counted from the date on which the recording of evidence commenced, relying on the decision of the learned single Judge in **Mathukutty v. State of Kerala** (1995 (1) KLT 742). It is the case of the petitioner that he surrendered before the Sub Divisional Magistrate on 05.11.1999. It is when the proceedings continued even after 05.05.2000 the petitioner raised the contention before the Sub Divisional Magistrate who was not inclined to upheld the same; and hence he resorted to the

inherent jurisdiction of this court. The petitioner has relied on the decision of another single Judge in **Saju Varghese and others v. State** (2005 (1) KLD (CRI)570) wherein the single Judge has held that the period of 6 months stipulated as detailed in Section 116(6) has to be computed from the date of appearance of the counter petitioner before the Sub Divisional Magistrate and not from the date of recording of evidence.

I find that the decision of the two single Judges, contradict. Hence for the sake of an authoritative pronouncement on the matter, the Crl. M.C will be placed before the Chief Justice for appropriate orders, to refer the matter before a Division Bench.

K.R. UDAYABHANU, JUDGE.

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